

Donald Dalton

April 16, 2009

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3
4 W. A. DREW EDMONDSON, in)
5 his capacity as ATTORNEY)
6 GENERAL OF THE STATE OF)
7 OKLAHOMA and OKLAHOMA)
8 SECRETARY OF THE)
9 ENVIRONMENT C. MILES)
10 TOLBERT, in his capacity)
11 as the TRUSTEE FOR NATURAL)
12 RESOURCES FOR THE STATE OF)
13 OKLAHOMA,) 4:05-CV-00329-TCK-SAJ
14)
15)
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23)
24)
25)

Plaintiffs,

vs.

TYSON FOODS, INC., et al,

Defendants.

DEPOSITION OF
DONALD DALTON

April 16, 2009

10:00 a.m.

999 Peachtree Street, N.E.
Atlanta, Georgia

Frances Buono, RPR, CCR-B-791

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1 Q. Did U.S. Poultry & Egg contribute to that
2 body of knowledge and provide information to the
3 consortium?

4 A. I don't have a clear answer to that. If
5 U.S. Poultry & Egg Association had research in any
6 particular area, it's published on our website, but
7 there may have been some of that information that we
8 funded that was included in the handbook. It should
9 have been, anyway, if it wasn't, or considered.

10 Actually the handbook, if you look at it,
11 it was produced by the NRCS, the personnel that were
12 there. Mr. Larry Goff was the head of that. So --
13 and these that you have given me are not
14 U.S. Poultry, you -- you didn't get them from
15 U.S. Poultry, you got them from someone else,
16 apparently.

17 Q. That's correct. Does the consortium
18 continue to exist today?

19 A. No, it doesn't. The funding from NRCS,
20 because of reorganization of that whole government
21 agency, fell apart and they withdrew the funding in,
22 I want to say 2003, or thereabouts. And they
23 withdrew the funding and the agency went away.

24 I don't know what happened to the
25 employees or what have you, but they probably

1 one, but that's --

2 Q. Did the consortium gather information from
3 the U.S. Poultry & Egg Association in working on this
4 Poultry Water Quality Handbook?

5 A. If we had the information, we made it
6 available to them. I would have to look through and
7 see if there's -- if you will notice, the way it's
8 put together, each one of these sort of issue things
9 has a reference material at the back of it.

10 And Larry would write this up as a summary
11 of those references, which were research -- primarily
12 researchers or data collectors. And that's where he
13 got -- that's where he got most of his information,
14 if not all of it. And it shows the reference to each
15 one of these as being the source of his summary of
16 what was in those references.

17 That's the way it was put together, I want
18 you to understand.

19 Q. Did you or anyone else at the U.S.
20 Poultry & Egg Association review this document before
21 it was finalized, or contribute to drafts?

22 A. Contribute to the draft, yes. For
23 example, if it were on certain subjects, we had
24 Dr. Charlie Beard, for example, at Southeastern. If
25 it was in his area of expertise, Larry Goff might

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1 come to him and say, you know, what do you think
2 about this.

3 Had no official -- he couldn't put a stamp
4 of approval or nonapproval on it, but I'm sure that
5 he continually looked at people who had expertise to
6 say, do you know any more about this, do you know
7 anything we should look at more seriously, or what
8 not.

9 But he used these people as a resource.
10 They are mostly technicians, researchers,
11 professionals, and that was his -- he had written
12 materials from the universities, et cetera, from
13 USDA, from EPA, from NRCS, et cetera, and he also had
14 people that had knowledge of the process. And so he
15 would go to them and get a review.

16 I don't know of any official review. Like
17 I say, people didn't say, yeah, I like this and I
18 don't like this, or what have you. But he would use
19 them as a resource in completing materials.

20 Q. You refer to these people, and I think
21 you're looking at the page that's marked Pigeon 0495
22 in the bottom corner; is that correct?

23 A. Yes, I am.

24 Q. You mention Charles Beard who's listed
25 here for the Southeastern Poultry & Egg Association.

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1 What was his area of knowledge on the topic of --

2 A. Charlie headed up our research projects in
3 terms of -- as I said, U.S. Poultry & Egg's
4 cornerstone is research, education, and
5 communication. And Charlie Beard, Dr. Beard, who at
6 one time worked for the Agriculture Research Service,
7 came to us after he retired, and he was in charge of
8 running our research process.

9 We didn't do any research ourselves, we
10 didn't have that money, but we funded research, and
11 he was the one that managed that process.

12 He would be able to tell Larry yes, or at
13 least go through the history of what we had in terms
14 of research and say yes, we have a paper that was
15 done by the University of Georgia, and so-and-so, and
16 give it to them. And that was kind of his role.

17 Q. Okay. And you were listed at the top of
18 the list here --

19 A. Right.

20 Q. -- Don Dalton, Southeastern Poultry & Egg
21 Association, as a major contributor who's given his
22 time and knowledge to help organize and write this
23 handbook.

24 Can you please describe for me your role
25 in creating this handbook?

1 A. In terms of the handbook itself, my role
2 was to say that Southeastern Poultry & Egg
3 Association -- I'm not a technician, I'm an
4 administrator. And we have this organization that we
5 put together. I'm one who purports that this
6 organization is worthy of giving your contribution to
7 it.

8 As far as my ability to technically
9 contribute to the handbook, it's more administrative
10 ability. I never wrote anything or anything like
11 that because I'm not a technician. My contribution
12 was the administrative side of saying yes, we need a
13 handbook, and contributed in that fashion to it.

14 But it mainly is people who had expertise
15 in water quality and in water quality aspects of what
16 the industry contributed to that.

17 Q. Further down on the list, about three
18 entries after Charles Beard, Ellis Brunton, Tyson
19 Foods, Inc., Springdale, Arkansas, is listed?

20 A. Right.

21 Q. Can you tell me what Mr. Brunton's role
22 was in the handbook?

23 MR. BOND: Objection; form. Lack of
24 foundation.

25 THE WITNESS: I can't tell you what he did

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1 or didn't do. Larry Goff, the full-time
2 employee, interfaced with people on that level
3 and I couldn't tell you what he contributed.

4 Q. (By Ms. Xidis) We have had -- if we can
5 just -- did we get the new copies?

6 MS. GORHAM: Yes.

7 THE WITNESS: Are we through with this
8 one?

9 Q. (By Ms. Xidis) No. Hold on to that, if
10 you would.

11 (Off the record.)

12 (Dalton Exhibit 4 was marked for
13 identification.)

14 Q. (By Ms. Xidis) Sir, we have got Exhibit 3
15 and now we have got Exhibit 4. Exhibit 4 -- the
16 reason that we are going through this process is
17 because Exhibit 3 there's a particular chapter where
18 the pages are out of order and a page is missing.

19 And so if you could please turn to Pigeon
20 0521 in Exhibit 3. Looking at Exhibit 3, this Dry
21 Waste Management chapter. As we flip through these
22 pages, you will see we have our title page. The
23 second page is Page 2. The third page is Page 5.
24 And then there's Page 3. So, this chapter's gotten
25 out of order. I believe, sir, I found a correctly

1 paged copy of this chapter which we have marked as
2 Exhibit 4.

3 Could you take a look at Exhibit 4 for me
4 and let me know if it appears to be a correctly
5 ordered and complete chapter on Dry Waste Management
6 from the Poultry Water Quality Handbook.

7 MS. GORHAM: Are you asking him whether it
8 appears to be in the correct order or whether he
9 recognizes it and knows that it's complete?

10 MS. XIDIS: Whether he recognizes it and
11 it appears to be a complete chapter.

12 MS. GORHAM: Do you understand the
13 question?

14 THE WITNESS: Uh-huh.

15 In terms of recognizing it, I'm not that
16 close to the manual that I've read all the
17 manual, for example, and said yes, this is a
18 complete copy.

19 It certainly appears to be what would be
20 in correct order since you got a cover page,
21 Page 1 -- or Page 2, which is the second page --
22 Page 3, Page 4, and Page 5.

23 Q. (By Ms. Xidis) Okay. Did the U.S.
24 Poultry & Egg Association distribute the Poultry
25 Water Quality Handbook?

1 A. It was done out of Tennessee and
2 Chattanooga by the consortium.

3 Q. And who is the intended audience for the
4 handbook?

5 A. Our original objective, and I think it was
6 achieved by Larry Goff, but our original objective
7 was to widely distribute this handbook to anyone as
8 we gathered names of people who were interested in
9 the poultry water quality aspect of things, that we
10 would send them a book. All they had to do was
11 contact Larry and he would send them a book.

12 How many we sent out, I couldn't tell you
13 in terms of when I say we, I mean in the consortium,
14 sent out, but those were sent out of Chattanooga.

15 And the intent was to widely distribute
16 it. If people were interested, here's a compendium
17 of information, some of it gathered from, like I say,
18 from the universities or other purported experts, for
19 your interest. If you're interested in it, here's
20 what we have been able to collect.

21 And also at some point, I don't know, we
22 had a list of names of, I would suspect a couple
23 hundred or whatever, of people who might be
24 interested in this. Those were people, if I'm not
25 mistaken, that had asked for the handbook, including,

1 perhaps, EPA and government agencies and that sort of
2 thing.

3 Q. When you said "we had a list of names,"
4 you're referring to the U.S. Poultry & Egg
5 Association --

6 A. No, I'm talking about --

7 Q. -- about the consortium?

8 A. -- about the consortium had a list of
9 names. That was part of the objective originally was
10 to find out who's interested, get them talking
11 together so that everybody had the same kind of
12 information.

13 We knew that EPA didn't have any experts
14 in the area, and that's the reason EPA joined, they
15 wanted to know more than they obviously knew at the
16 time about it, and that was the objective.

17 So we did -- we being the consortium --
18 collect people who were interested and send them a
19 book. Now, I can't verify whether it was sent or not
20 because I wasn't in charge of sending it, but that
21 was the objective of the organization.

22 Q. Other than the creation of this handbook,
23 did the Poultry Water Quality Consortium do other
24 activities, such as hold workshops or meetings?

25 A. Not in terms of formal workshops. With

1 Larry Goff, again, he was the point man and he would
2 visit -- if there were a gathering of any kind that
3 had to do with poultry water quality, he would attend
4 some of those, as he could. Or he would go out and
5 talk to the department of whatever in Kentucky that
6 had an interest in that.

7 He traveled a good bit and tried to pull
8 together people who were interested. So he did a lot
9 of that.

10 As far as formal, there may have been. I
11 can't recall one where we had a meeting sponsored by
12 the Poultry Water Quality Consortium that gathered
13 this in. But he visited with a lot of people and
14 states and Federal Government and so forth.

15 Q. Is it fair to say that the publication and
16 distribution of the handbook was the main objective
17 of the Poultry Water Quality Consortium, or did it
18 have others?

19 MR. SANDERS: Objection to the form,
20 speculation.

21 MR. BOND: Object to the form.

22 MS. ROCK: Object to form.

23 THE WITNESS: The main objective, as I
24 stated, was to gather material and to bring
25 people of interest together.

1 Now, the outcome of gathering information
2 was principally the handbook, so in that sense,
3 that was part of the objective of the
4 consortium.

5 Q. (By Ms. Xidis) Other than the handbook
6 that we've marked and the other edition that came
7 out, did it publish other materials on this topic?

8 A. Yes. In the sense of a brochure. I
9 recall a brochure about poultry water quality. It
10 was kind of to give to people to see what was
11 interested.

12 Beyond that brochure, which was a
13 three-way foldout brochure that says Poultry Water
14 Quality Consortium, what we were trying to do,
15 et cetera, in it, I don't know of any other
16 publication. Certainly not anything of -- the idea
17 was to consolidate it and show the body of knowledge
18 that we were able to accumulate.

19 Q. Earlier you mentioned that the office in
20 Chattanooga of the consortium is actually where the
21 handbooks were mailed out to the interested parties.
22 But did the U.S. Poultry & Egg Association increase
23 awareness about the handbook or inform its members
24 about the handbook?

25 A. We did in this sense, I know. That is

1 that the poultry trade show in Atlanta each January,
2 Poultry Water Quality Consortium had a booth. That
3 was part of our contribution in terms of doing that.

4 There were -- well, it had a booth for
5 several years. And information about -- and the
6 poultry exposition draws international visitors also,
7 so I would believe -- I never participated in the
8 booth, because I had other duties and Buddy was
9 there, and I believe that was the major contribution
10 from the U.S. Poultry & Egg Association to a method
11 of expanding the distribution of the book.

12 And that includes some internationals,
13 because I think the book was also of interest to some
14 international people, and Larry would have the book
15 there and distribute it to those who were interested.

16 So from that standpoint, yes, we
17 contributed to the knowledge that the book existed
18 and the Poultry Water Quality Consortium existed.

19 In addition to that, Larry Goff would come
20 to our board of directors and give a brief on what's
21 happened from time to time with where the Poultry
22 Water Quality Consortium, what it was doing and so
23 forth.

24 So, I don't remember any official
25 publication where we created a brochure and sent it

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1 MS. XIDIS: Thank you, Todd.

2 Q. (By Ms. Xidis) Mr. Dalton, I'm going to
3 hand you back Exhibit Number 5, which is the Second
4 Edition of the Poultry Water Quality Handbook, and
5 ask you whether this appears to be an accurate and
6 complete copy of that document?

7 A. Yes. I had looked at it earlier and so
8 stated.

9 Q. Thank you.

10 Before we took our break, Mr. Dalton, we
11 were talking about a particular workshop and U.S.
12 Poultry & Egg Association's workshops and seminars
13 that they hold periodically. I've got some questions
14 for you about those.

15 I'm afraid some of my -- actually, let's
16 stop for a minute.

17 (Off the record.)

18 MR. WALKER: While we are at a pause for a
19 moment, I would like to add, just in case I
20 confused anything, that the withdrawal of
21 Cargill's objections to Exhibit 5 are as to the
22 confidentiality objections, and any other
23 objections remain.

24 MS. XIDIS: Okay.

25 Q. (By Ms. Xidis) Mr. Dalton, it's my

1 necessarily, reflect the opinions of the individual
2 members of the association?

3 A. I would say no, not necessarily. We might
4 present a position to the board of directors and have
5 an objection to it from some member --

6 Q. So simply because the U.S. Poultry & Egg
7 Association takes a position, doesn't mean that the
8 individual members, necessarily, agree with that
9 position. Would that be accurate?

10 A. That's correct.

11 Q. To your knowledge, has the -- strike that.
12 Has the Poultry Water Quality Consortium
13 ever taken the position that there should be a
14 complete ban on the use of poultry litter as
15 fertilizer?

16 A. I don't know the answer to that.

17 Q. It was my understanding from your prior
18 testimony that this Poultry Water Quality Handbook
19 was a collection of various materials that existed at
20 the time that the handbook was put together; is that
21 correct?

22 A. That's correct.

23 Q. So would you agree that the size
24 underlying nutrient management and litter application
25 changes over time?

1 A. Well, there's probably an ever-improving
2 body of work that I guess would -- restate the
3 question, maybe I can...

4 Q. I guess what I'm getting at, the Poultry
5 Water Quality Handbook that's Exhibit 3 contains the
6 body of knowledge that existed at the time that it
7 was put together?

8 A. That's correct.

9 Q. There's a second edition of this handbook
10 that was Exhibit 5?

11 A. Yes.

12 Q. Okay. I assume that the second edition
13 was necessary because there was some kind of change
14 in that body of knowledge, would that be accurate?

15 A. I believe that's accurate, yes.

16 Q. And continuing that forward, that body of
17 knowledge will continue to change and continue to
18 improve, would you agree with that general statement?

19 A. Yes.

20 Q. So that the information that's contained
21 in the Poultry Water Quality Handbook may not now be
22 accurate. Would that be a correct statement? Or
23 might not reflect the most recent science on those
24 issues addressed in the handbook?

25 A. Not being a scientist, I'm not sure I'm